

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JERRY LEON DEES, JR.,

Plaintiff,

V.

**HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI MOTOR
AMERICA, INC.,**

Defendants.

CIVIL ACTION NO.:
2:07-cv-00306-MHT-CSC

**DEFENDANTS' MOTION TO CONTINUE AND REQUEST FOR
EXPEDITED TELEPHONIC HEARING**

COME NOW Defendants Hyundai Motor Manufacturing Alabama, LLC (“HMMA”) and Hyundai Motor America, Inc. (“HMA”) (collectively “Defendants”), by and through their undersigned counsel of record, and respectfully request the Court for an order continuing this case from its trial setting on April 14, 2008. In support of this motion, Defendants state as follows:

1. On March 7, 2008, the undersigned counsel notified this Court as well as the Honorable Judge Lynwood Smith of the Northern District of Alabama of simultaneously trial settings in the present case and in the case of Susan Gallagher v. Blue Cross Blue Shield of Alabama, Inc., In the Northern District of Alabama, Civil Action Number: 2:06-cv-00770-CLS. See Mr. Palmer's letter, attached hereto as Exhibit 1. To date, counsel has not received any instruction from either Court regarding which case will be tried on April 14. Counsel has received numerous inquiries from the respective Defendants in the cases and is working with

both Defendants to arrange witness schedules and travel arrangements for trial. Each Defendant is incurring some costs that will necessarily be duplicated (for one or the other), depending on which case is set for trial on April 14.

2. The relative facts regarding the two cases are as follows:

(a) The case of Gallagher v. Blue Cross Blue Shield of Alabama, Inc. was filed on April 11, 2006. This case involves in an alleged wrongful termination in violation of Plaintiff's FLMA rights. The case is anticipated to take approximately three to four days for trial. Counsel in this case has recently conferred and both sides agree that settlement is highly unlikely.

(b) The case of Dees v. Hyundai Motor Manufacturing Alabama, LLC, and Hyundai Motor America, Inc. was filed on April 10, 2007. In this case, Plaintiff contends he was terminated in violation of his rights under USERRA. It is anticipated that his case will take approximately four to five days to try. Although the Court has offered significant insights into its anticipated ruling, summary judgment remains pending. It is Defendants' counsel's opinion that settlement is highly unlikely.

Additionally, depending precisely which claims survive summary judgment, it is likely that Mr. Greg Kimble will be called as a witness. While Mr. Kimble is a relative of the Court (See Defendants' Disclosure Pleading, filed contemporaneously with this motion). The degree of relationship does not appear to be sufficiently close to necessitate recusal. Nonetheless, Defendants do not wish for the Court to be surprised by Mr. Kimble's presence in the trial.

3. Defendants respectfully request that the Court conduct an expedited hearing on this motion so that the case can be prepared as efficiently and as cost effectively as possible.

4. Counsel for Defendants has filed a simultaneous motion in the Gallagher case for the same request for relief.

Respectfully submitted this 31st day of March, 2008.

/s/ Timothy A. Palmer
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J. Trent Scofield (SCO-024)
T. Scott Kelly (KEL-053)
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Pro Hac Vice Granted 05/15/07

Attorneys for Defendants Hyundai Motor
Manufacturing Alabama, LLC and
Hyundai Motor America, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2008, I electronically filed the foregoing *Defendants' Motion to Continue and Request for Telephonic Hearing* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: W. Perry Hall, Vincent F. Kilborn, III, David Allen McDonald, Jeffrey Rayborn Sport, J. Trent Scofield, T. Scott Kelly, and Matthew K. Johnson.

/s/ Timothy A. Palmer
OF COUNSEL

Jerry Dees v. HMMA and HMA
2:07-cv-00306-MHT-CSC

EXHIBIT 1

**Defendants' Motion to Continue and Request for
Expedited Telephonic Hearing**



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March 7, 2008

Hon. Myron H. Thompson
United States District Court
Middle District of Alabama
P.O. Box 235
Montgomery, Alabama 36104

Hon. C. Lynwood Smith
United States District Court
Northern District of Alabama
1729 5th Avenue North
Birmingham, Alabama 35203

Re: *Jerry Leon Dees v. Hyundai Motor Manufacturing Alabama, LLC*
United States District Court, Middle District of Alabama, 2:07-cv-00306-MHT-CSC

Susan Gallagher v. Blue Cross Blue Shield of Alabama, Inc.
United States District Court, Northern District of Alabama, 2:06-cv-00770-CLS

Dear Judge Thompson and Judge Smith:

I am writing to advise each of you that I am scheduled as trial counsel for the respective defendants in each of the above referenced cases which are set on your dockets for April 14, 2008. The pretrial conferences in these matters were only a couple of days apart. When I advised Judge Smith of this conflict in the *Gallagher* case, he requested that I wait a couple of weeks for the possible resolution of the summary judgment in *Dees*. That timeframe has now passed and pursuant to Judge Smith's request, I am writing this letter to notify each of you of this potential trial conflict. Please advise as to how you wish for me to proceed from this point.

Sincerely yours,

A handwritten signature in black ink that reads "Tim Palmer".

Timothy A. Palmer

TAP/clc

cc: Heather Leonard, Esq.
Jeffrey R. Sport
Vincent F. Kilborn, III
W. Perry Hall
David Allen McDonald